IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mohru Vs. State of Rajasthan
(D.B. Criminal Appeal No.755/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 29-8-2001 in Sessions Case No.62/2001 passed by Sh. K.C. Jat, RHJS, Additional Sessions Judge (Fast Track) Gangapur City.

Date of Judgment: September 06, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Vijay Singh Yadav, for the appellant.

Mr. B.N.Sandhu, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Mohru, the appellant herein, was forced to take sorrowful sighs by his real brother Parsadi who made allegations against the appellant that he committed murder of his (Parsadi) wife Prem. The appellant was put to trial before learned Additional Sessions Judge (Fast Track) Gangapur City, who vide judgment dated August 29, 2001 convicted and sentenced the appellant under section 302 IPC to suffer imprisonment for life and fine Rs.2000, in default to further suffer six months simple imprisonment.

2. In the instant appeal the defence of appellant is that informant Parsadi had illicit relations with his daughter-in-law Kamla, whose husband (son of Parsadi) was away from the country. On the fateful night when Prem

(deceased) returned from a marriage she saw her husband Parsadi coming out from the pator (residential room) of Kamla. When Prem raised objection, Parsadi killed her and removed hurdle from the path of his illicit relationship forever. Parsadi killed two birds with one stone by implicating appellant falsely in the case.

3. Before adverting to the rival submission we straightway proceed to scan the prosecution case that emerges out of the written report made by informant Parsadi (Pw.1). In the report it was stated that on April 14, 2000 around 4.30 AM when informant returned from his `Khalihan' to his house, he saw his brother Mohru coming out of his (Parsadi) house. When he went inside the house and awoke his wife, he found her speechless. There were injuries on her neck and thighs. He immediately rushed to Mohru's house and demanded explanation from him. It was Mohru who killed his wife because of enmity with him. On that report a case under section 302 IPC was registered and investigation commenced. Autopsy on the dead body was performed, sight was inspected, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 10 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence and stated that Parsadi himself killed his wife because he had illicit relationship with his daughter-in-law Kamla and his wife created hurdle in the said relationship. Four witnesses in support of defence were examined. Learned trial Judge on

hearing final submissions convicted and sentenced the appellant as indicated herein above.

4. In the absence of any eye witness to prove its case the prosecution relied upon the following circumstances to connect the appellant with the offence alleged against him:-

(i) Informant Parsadi saw the appellant, armed with beelni (small axe), running out of the house of deceased.

(ii) Parsadi raised alarm and named appellant as culprit. The appellant was arrested immediately.

(iii) Beelni (stained with blood) got recovered at the instance of appellant.

(iv) Appellant also sustained injuries because of struggle with deceased.

5. Death of Prem was undeniably homicidal in nature. As per post mortem report (Ex.P-14) following ante mortem injuries were found on the dead body:-

1. Bruise 4cm x 2cm on the Rt. cervicle region mid part.
2. Bruise 5cm x 2cm Left cervicle region just below to mendibular region circularly present.
3. Incised wound 3cm x 1cm x muscle deep on the Rt.cervicle region just 2.5cm above to clevicle bone. There is torn carotid vessels.
4. Incised wound 1.5cm x .5cm x muscle deep just above the medial end of the Rt.clevicle bone.
5. Incised bone 5cm x 5cm just above to injury No.4.
6. Bruise 3cm x 5cm on left nostril (External)
7. Bruise 1.5cm x .5cm on the Rt. nostril (External)
8. Bruise 3.5cm x 5cm on the left cheek.

9. Incised wound 1cm x .5cm x muscle deep on left thigh medial aspect.
10. Incised wound 1 x .5cm x muscle deep on the right thigh upper 1/3rd part medial aspect.

In the opinion of Dr. T.R. Meena (Pw.8) the cause of death was hemorrhagic shock and cardio respiratory arrest.

6. It is now to be seen as to whether the prosecution has unerringly proved from the circumstantial evidence that it was the appellant who committed murder of Prem.

7. Parsadi (Pw.1) is the star witness of the prosecution. He is the real brother of appellant and on the date of incident both resided in the neighbourhood of each other. In his deposition Parsadi stated that on the preceding night he along with his son Bharat Lal and grand son Man Singh had gone to sleep in their `Khalihan' where crop of wheat got stored. In the morning around 4.30 AM when child Man Singh awoke and asked for drinking water, he proceeded to his house. No sooner did he reach near his house he saw Mohru coming out of his Pator. He was armed with `Beelni'. Parsadi thereafter called his wife, but there was no response from inside. He then entered the house and found his wife Prem lying dead on the cot, she had sustained injuries on her neck and other parts of the body. He immediately rushed to the house of Mohru and told him “Killer what you did”. At that time Bharat Lal, Ramji Lal and other villagers gathered. Parsadi further stated that Mohru had sold the land which came in his share, thereafter their relations got strained and because of this enmity Mohru killed his wife. In the cross examination he admitted that he did not state in the report that he saw Mohru armed with Beelni. He denied to have illicit

relations with his daughter-in-law Kamla. He further denied that meeting of Caste Panchayat was held on April 20, 2000 and in that Panchayat he and Kamla admitted that they had illicit relations and he instituted false case against Mohru. He however admitted that he did not perform last rites of Prem:-

> "मेरी पत्नी प्रेम की अस्थियां मैं गंगाजी नहीं ले गया। ना ही उसका बारहवां किया ... बारहवां इसलिए नहीं किया कि मेरा लडका विदेश से नहीं आया ... मेरी पत्नी का क्रियाकर्म छोटे पुत्र ने किया।"

8. Kamla (Pw.2) in her deposition stated that in the night of incident she was sleeping in a room and her mother-in-law Prem was sleeping in other room. In the morning around 4, 4.30 AM she heard noise and when she tried to open the gate it was closed from outside which was opened by her brother in law Bharat Lal. After coming out of the room she found the crowd at the house of Mohru and her father-in-law Parsadi was asking Mohru as to why he killed the deceased. In her cross examination she admitted that her husband did not come from abroad on the death of her mother-in-law. She denied to have illicit relations with her father-in-law. Testimony of Parsadi and Kamla gets corroboration from the statement of Bharat Lal (Pw.3). Bhurya (Pw.5), neighbour of Parsadi, however deposed that on the day of incident Parsadi came to him and told that his wife was killed by somebody. Thereafter Parsadi reached to the house of Mohru, who was sleeping on the cot, turned down Mohru from the cot and had altercation with him. Bhurya was declared hostile. In his cross examination he deposed that Parsadi did not perform the last rites of his wife after her death. He further stated that in the Caste Panchayat Parsadi and Kamla admitted their illicit relationship and one Jagdish filed a complaint against Parsadi with the

allegations that he committed murder of his wife.

9. Pyare Lal (Pw.10) deposed that on April 14, 2000 he was posted as Sub Inspector in the Police Station Gangapur City and investigation of case was handed over to him. He arrested Mohru on April 14, 2000 and on April 24, 2000 i.e. after 10 days of the incident Mohru gave information under section 27 of the Evidence Act about weapon of offence. Pursuant to that information `Beelni' got recovered on April 24, 2000. In the cross examination this witness stated that court forwarded complaint instituted by Jagdish Prasad Mali under Section 156(3) CrPC on April 24, 2000 and he registered FIR No.260/2000 against Parsadi for having committed murder of his wife. But on investigation the complaint was found false. As per the inquest report drawn by Pyare Lal, dead body of Prem was found lying on a cot covered with the quilt.

10. In the explanation under section 313 CrPC appellant claimed innocence and stated that Parsadi had illicit relations with his daughter-in-law Kamla and because of this Prem, wife of Parsad, used to quarrel with Parsadi. On the fateful night when Prem returned after attending a marriage she saw Parsadi coming out of the room of Kamla. Prem and Parsadi then quarreled. In the morning while he (Mohru) was sleeping, in the courtyard of his house along with his mother and daughter, Parsadi came to his house and overturned his cot and began to quarrel. When neighbours asked Parsadi as to what had happened he said that somebody killed his wife. Thereafter Caste Panchayat met and in front of Panchayat Parsadi and Kamla admitted their guilt.

11. In support of his defence the appellant examined four witnesses.

Jagdish (Dw.1) in his deposition stated that few days prior to death of Prem, Parsadi Lal had a quarrel with her because she did not like her husband's illicit relations with her daughter-in-law. According to Jagdish, Parsadi had killed his wife and falsely implicated Mohru. Jagdish filed complaint against Parsadi. A copy of complaint was placed on record. Jagdish further stated that in the meeting of Caste Panchayat Parsadi and Kamla admitted that they had sexual relations and Mohru was falsely implicated in the case. Maya (Dw.2), Kajodya (Dw.3) and Mitthan (Dw.4) corroborated the testimony of Jagdish.

12. Under Section 233(1) of CrPC an accused person is entitled to be reminded of his right to adduce evidence in support of his defence. This is a salutary provision which is mandatory in nature and intended to protect the interest of accused person. This section is not a mere formality but is an essential part of a criminal trial. It is a fundamental principal of criminal jurisprudence that an accused person is entitled to every opportunity to meet the prosecution case and to prove his innocence. The defence evidence cannot be scuttled on filmsy grounds.

13. We have perused the evidence carefully and considered the reasonings of the learned trial Judge. We find ourselves unable to concur with the judgment of learned trial Judge. The reasons are as under:-

(i) In the written report (Ex.P-1) informant Parsadi did not state that he had seen appellant armed with Beelni (small axe).

(ii) Appellant who was arrested at 7 PM on April 14, 2000 alleged to have made disclosure statement under section 27 of the Evidence Act on April 24, 2000 i.e. after ten days. Delay in

making said statement remained unexplained.

(iii) Deceased Prem was not cremated by her husband Parsadi. Even her last rites were not performed. The elder son of deceased, who was away from the country, was not informed about the death.

(iv) Evidence of defence witnesses about admission of guilt by Parsadi and his illicit relations with Kamla was not considered.

(v) Complaint filed by Jagdish against Parsadi also left unnoticed.

(vi) Motive behind murder of Prem could not be established. It is inexplicable as to why the appellant killed Prem and spared Parsadi, when he had enmity with Parsadi.

(vii) Presence of Parsadi at 4.30 AM in front of his house appears doubtful. If he had seen appellant coming out of the room of his wife, why he allowed appellant to go to his house? Why he did not demand explanation then and there? The evidence of Parsadi read as a whole does not appear to have a ring of truth. He failed to give explanation as to why he did not mention in the written report that he saw appellant armed with Beelni (small axe). It is difficult to believe that the appellant, who had enmity with Parsadi would spare him at that moment when his blood was boiling and he came out of the house armed with Beelni after killing the wife of Parsadi.

(viii) The injuries sustained by the appellant could be the result of his fall from the cot, which was overturned by Parsadi.

14. Upshot of the above discussion is that the circumstances from

which the conclusion of guilt was drawn by the learned trial Judge could not be fully established. The circumstances are not consistent only with the hypothesis of the guilt of the appellant. They are not of a conclusive nature and tendency and do not exclude every possible hypothesis except to the one to be proved. The chain of evidence is not so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and do not show that in all human probability the act had been done by the appellant.

15. For these reasons, we allow the appeal and set aside the judgment dated August 29, 2001 of the learned Additional Sessions Judge (Fast Track) Gangapur City. We acquit the appellant of the charge under section 302 of the Indian Penal Code. The appellant, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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